

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations)
(Turrell and Wilson, Arkansas))
)

MM Docket No. 97-215
RM-9168

To: Chief, Allocations Branch

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**REPLY COMMENTS OF
POLLACK BROADCASTING COMPANY**

Pollack Broadcasting Company ("Pollack"), the petitioner in the captioned rulemaking proceeding, by counsel, hereby submits its reply comments as called for by the FCC's Notice of Proposed Rule Making released October 10, 1997 (DA 97-2169).

As requested by Pollack, the Commission has proposed to change the channel allotment of station KAFW, now authorized for FM Channel 234A in Wilson, Arkansas, to the nearby community of Turrell, Arkansas. This change will provide Turrell with its first local aural transmission service.

In response to the NPRM, Pollack submitted timely comments restating *inter alia* its firm intention to apply for a construction permit to effectuate the change in the channel allotment to Turrell, and to build the new station promptly.

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Only one other timely response to the NPRM was filed. One Elijah Mondy, Jr. (“Mondy”) submitted a letter asking that the FCC “reject this rulemaking.” As shown below, Mondy’s contentions are senseless and should be dismissed out of hand.

I. Mondy’s Comments Are Procedurally Defective.

Mondy’s Comments are procedurally defective. Because they do not meet the threshold requirements for comments in a channel allotment rulemaking, they are not entitled to further consideration for that reason alone.

Section 1.52 dictates that all pleadings filed with the FCC by a party who is not represented by an attorney must include a verification. Mondy’s Comments contain no verification.

The requirement for verification is critical because it places upon the filer the burden of formally representing to the FCC that his pleading is submitted in good faith. As shown below, Mondy’s Comments cannot satisfy that good faith standard.

Moreover, Section 1.52 provides that if a pleading is lodged with the “intent to defeat” the purpose of the Rule, it may be “stricken” and “the matter may proceed as if the document had not been filed.” Accordingly, the Commission should promptly conclude this proceeding without giving further attention to Mondy’s Comments.

II. Mondy’s Post-Comment Pleadings Must Be Stricken.

Mondy's initial "Comments" are dated November 29, 1997. No sooner were the comments lodged at the FCC but Mondy authored a second document, entitled "Petition to Deny (Modification of Formal Comments Already Submitted to the Office of the Secretary)." This second pleading is dated December 1. This second submission is identical to the first except for one sentence in the third paragraph. In that sentence, Mondy makes a claim concerning the status of local broadcast service in Wilson. That claim is not only inaccurate but irrelevant, because it is moot. As discussed *infra*, the community of license for KOSE(AM) has been changed from Osceola to Wilson.

Mondy has evidently submitted yet a third unverified document, entitled "Summary and Clarification," dated December 12, 1997, which Pollack received in the afternoon mail today. This submission is plainly unauthorized and should be stricken. In any event, it adds nothing to what Mondy previously filed.

Mondy apparently wishes to argue that the relicensing of KOSE to the community of Wilson is irrelevant because KOSE is an AM station. However, whether Wilson's remaining local aural service is AM or FM is not a controlling variable in the FCC's assessment of Pollack's proposal.

III. Mondy's Comments Are Meritless.

Not only are Mondy's post-comment filings unworthy of consideration, but Mondy's original Comments lack any merit even if the Commission should take cognizance of them procedurally. The FCC's issuance of the NPRM reflects the

Commission's sound conclusion that Pollack's proposal, if effected, will promote the public interest and further the FCC's mandate under the Communications Act. In that regard, attached hereto as Exhibit 1 is a letter from the Mayor of Turrell supporting the proposal.

Pollack's submissions in connection with the rulemaking petition constitute a compelling showing on all points relevant to the FCC's determination whether to amend the FM Table of Allotments. There simply is no rational basis under settled FCC policy for upsetting the Commission's conclusion as to the merits of Pollack's proposal.

Irrational notions are a different matter, and Mondy's letter teems with several. First, he contends that the grant of Pollack's proposal would mean that "the community of Wilson would be denied" any local aural service because AM station KOSE "is licensed to Osceola." Mondy Comments at 1.

This is false, as is clear from even a cursory review of the NPRM or Pollack's previous submissions. The FCC explicitly recognized at Paragraph 3 and Footnote 7 of the NPRM that "Wilson will not be devoid of local service as a result of the instant proposal" because KOSE(AM) has changed its community of license from Osceola to Wilson.¹

¹ Mondy, in his initial Comments, averred that "Kose is licensed to Osceola, AR." Comments at 1. In his subsequent Petition to Deny he backtracked slightly, stating that "the records that I have checked indicated that there are no stations in Wilson..." Although Mondy did not specify what records he had checked, this
(continued...)

Second, Mondy argues that other parties who may be interested in applying for the new Turrell allocation “would be locked out of the process of competing for the FM allotment in Turrell which is not fair, a violation of principle, and not in keeping with the spirit of the process.” Mondy Comments at 1. Ironically, Mondy does not commit to filing an application for the Turrell allotment once it is made, nor does he identify anyone in particular who might take such a step.

Mondy apparently is unaware that the Commission modified what he terms “the spirit of the process” a number of years ago. the Commission recognized that the former procedure carried with it the potential for a draconian result. Because a petitioner proposing a preferential change in FM allotments risked the loss of an existing authorization in connection with a change in its city of license, such changes rarely occurred at all. The public interest was not served by that policy. Therefore, the Commission now expressly permits the procedure Pollack has requested “without affording other interested parties an opportunity to file competing expressions of interest.” NPRM at Para. 2 (citing *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989)). Mondy’s complaint on this score thus fails.

¹(...continued)

assertion was utterly unreliable and irresponsible. Pollack notes that Mondy has, *sub silentio*, deleted that representation from the latest incarnation of his Comments (the Summary and Clarification received this afternoon).

Finally, Mondy averts to a portion of a letter by which the Audio Services Division returned the application Pollack had filed for modification of the KAFW permit to specify a transmitter site consistent with the instant rulemaking proposal. Pollack had submitted the modification application in order to demonstrate its good faith in advocating service to Turrell by showing, on Form 301, the specifics of a technical facility that would comply with Commission requirements. Pollack also hoped that the rulemaking petition would have been granted by the time the modification application was reached for study.

The action by the Audio Services Division related solely to the Division's procedural concerns, and did not detract from the substantive merits of Pollack's application.

Mondy fails to understand that fact. He appears to believe that the action of the Audio Services Division in returning Pollack's application to modify the KAFW facilities somehow bears on Mondy's assertion that the allotment in Turrell should be open to other applicants. One is at a loss even to articulate this argument in a coherent way, let alone respond to it. Mondy is simply confused.

The understandable refusal of the Audio Services Division to process an application specifying facilities serving Turrell in advance of a Report & Order amending the FM Table of Allotments to that effect was not intended as a prejudgment on the value of Pollack's overall plan to provide a first local transmission service to Turrell. Mondy treats the NPRM as a departure from a

ruling of the Audio Services Division. However, the only fair reading of the letter from the Audio Services Division, considering its procedural contest, is that the Audio Services Division was simply deferring the matter to a determination by the Policy & Rules Division as to the propriety of changing the city of license of KAFW to Turrell.

In sum, contrary to Mondy's murmurings, there is no aberration in the procedure reflected in the NPRM. Mondy has given no intelligent reason for the FCC not to grant Pollack's proposal.

IV. Mondy's Comments Are Not Submitted in Good Faith.

We would draw the FCC's attention to several other features of Mondy's letter. First, Mondy assumes for purposes of his letter the mantle of a mere concerned citizen. His comments show a return address of "Country Club Hills, IL," and reveal no financial stake in the outcome of the rulemaking. However, Mondy is the licensee of broadcast station KJIW-FM at West Helena, Arkansas. Station KJIW-FM operates on 94.5 MHz, which is the first-adjacent channel to Channel 234A, the frequency allotted to Pollack's KAFW in MM Docket 93-259. Pending with the FCC is Mondy's application under File No. BLH-970908KC for a license to cover the recent one-step upgrade of that facility to Class C3. Although the distance from Helena to Turrell (about 110 km or 69 miles) is substantially more than the 89 km (55-mile) separation required by Section 73.207, Mondy's criticism of Pollack's proposal apparently is evidently animated by his

belief that the new re-allotment to Turrell may adversely affect Mondy's future plans for the West Helena station. In any event, it is clear that Mondy's Comments have nothing to do with the public interest ramifications of the NPRM, but are rather a badly-disguised ploy to derail the plans of a perceived competitor.

V. Conclusion

For the reasons set forth above, Mondy's Comments have no proper bearing on the FCC's decision to adopt a Report & Order validating the proposal set forth in the NPRM. Once such a Report & Order is issued, Pollack will apply for the facilities appropriate for use of channel in Turrell, and will build the new Turrell station post haste.

Respectfully submitted,

POLLACK BROADCASTING
COMPANY

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Its Attorneys

December 16, 1997

City Of Turrell

P.O. Box 249
Turrell, Arkansas 72384

December 9, 1996

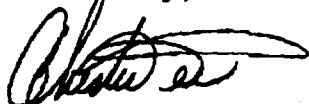
Pollack Broadcasting Co.
342 River Oaks Rd.
Memphis, TN. 38120

Gentlemen:

We understand your firm has an application before the FCC to change the city of license of an FM station from Wilson, AR. to Turrell, AR. We firmly support this action.

Turrell is a small, but growing community. Our radio listeners and advertisers have never had a local radio station. A local radio station responsive to the needs of our citizenry would be both a cultural and economic boom to us. I would expect this proposed new station to be firmly supported by the residents of Turrell and the surrounding area.

Sincerely,

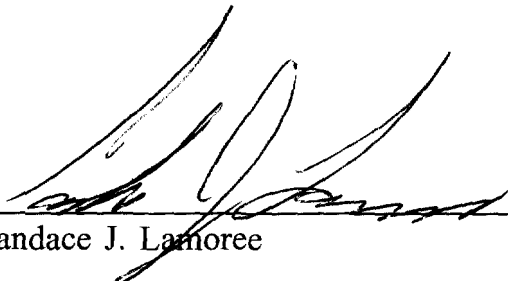


Chester McGee
Mayor of Turrell

CERTIFICATE OF SERVICE

I, Candace J. Lamoree, hereby certify that on this date I caused the foregoing "Reply Comments of Pollack Broadcasting Company" to be served by U.S. first class mail, postage prepaid, on the following:

Elijah Mondy, Jr.
4200 W. 177th Street
Country Club Hills, IL 60478



Candace J. Lamoree

Dated: December 16, 1997